

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES,

Plaintiff,

v.

KENNETH JOHN RHULE,

Defendant.

NO. CR20-105 JCC

RESPONSE TO COURT'S ORDER AT  
DKT. NO. 73 REGARDING CURRENT  
TRIAL DATE AND PROPOSED NEW  
TRIAL DATE

**I. INTRODUCTION**

On October 2, 2020, this Court entered an Order on the parties' stipulated motion to continue the trial and pretrial motions deadline, continuing the trial to January 25, 2021 and the pretrial motions deadline to November 12, 2020. Dkt. No. 73. The Court ordered the parties to file any objection to the January 25, 2021 trial date within 14 days of the Court's order on Defendant Kenneth John Rhule's motion to revoke the detention order. *Id.*

**II. FACTS PERTAINING TO RESPONSE**

Kenneth John Rhule ("Mr. Rhule") respectfully requests that the Court continue the trial from January 25, 2021 to a date convenient for the Court's schedule in April 2021.

RESPONSE TO COURT'S ORDER AT DKT. NO. 73  
REGARDING CURRENT TRIAL DATE AND  
PROPOSED NEW TRIAL DATE – 1

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1 Mr. Rhule and his counsel need additional time to prepare for trial as the government  
2 has produced an extraordinary amount of discovery in this matter and the charges Mr. Rhule  
3 faces are serious, potentially exposing him to a 10-year mandatory minimum prison sentence.

4 Counsel is working diligently to review the provided discovery, which consists of over  
5 341,000 pages, in addition to native files containing spreadsheets and video recordings.  
6 Because Mr. Rhule remains incarcerated at the FDC SeaTac, counsel's ability to review this  
7 discovery with Mr. Rhule to prepare for trial or other resolution has been limited. Because of  
8 COVID procedures and precautions, Mr. Rhule's access to the law library to review an  
9 electronic copy of the discovery is also limited.

10 Based on these facts, it is the opinion of counsel that:

11 (1) taking into account the exercise of due diligence, the failure to grant a continuance  
12 in this case would deny counsel for the defendant the reasonable time necessary for effective  
13 preparation, due to counsel's need for more time to review the evidence, consider possible  
14 defenses, and gather evidence material to the defense, as set forth in 18 U.S.C.  
15 § 3161(h)(7)(B)(iv); and

16 (2) failure to grant such a continuance in this proceeding would likely result in a  
17 miscarriage of justice, as set forth in 18 U.S.C. § 3161(h)(7)(B)(i); and

18 (3) the additional time requested is a reasonable period of delay, as additional time is  
19 needed to determine whether a resolution short of trial can be reached in this matter; and

20 (4) the case is sufficiently complex that it is unreasonable to expect adequate preparation  
21 for pretrial proceedings or the trial itself, within the current trial schedule, as set forth in 18  
22 U.S.C. § 3161(h)(7)(B)(ii); and  
23

(5) the ends of justice will best be served by a continuance, and that the ends of justice outweigh the best interests of the public and the defendant in any speedier trial, as set forth in 18 U.S.C. § 3161(h)(7)(A); and

(6) the additional time requested between the current trial date of January 25, 2021, and the new trial date in April is necessary to provide counsel for the defendant the reasonable time necessary to prepare for trial, considering all of the facts set forth above.

### III. DISCUSSION

Whether to grant a continuance is a matter committed to the sound discretion of the Court. *United States v. Flynt*, 756 F.2d 1352, 1358–62 (9th Cir. 1985). “The concept of fairness, implicit in the right to due process, may dictate that an accused be granted a continuance in order to prepare an adequate defense.” *United States v. Bogard*, 846 F.2d 563, 566 (9th Cir. 1988).

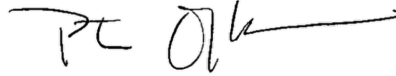
These principles are embodied in the Speedy Trial Act, 18 U.S.C. §§ 3161–3167, which permits the Court to continue a trial if “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speed[ier] trial.” 18 U.S.C. § 3161(h)(7)(A). In making this determination, the Court is permitted to consider both whether the failure to grant such a continuance would “unreasonably deny the defendant or the Government continuity of counsel” and whether such failure would deny counsel “the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(h)(7)(B)(iv). These factors apply to this case.

### IV. CONCLUSION

Mr. Rhule respectfully request that the Court continue the trial from January 25, 2021 to a date convenient for the Court’s schedule in April 2021.

1           Undersigned counsel has discussed this issue with counsel for the government, who has  
2 indicated she has no objection to a trial date in this time frame.

3           Dated this 22nd day of October, 2020.

4           

5           \_\_\_\_\_  
6 Peter Offenbecher  
7 WSBA NO. 11920  
8 SKELLENGER BENDER, P.S.  
9 Attorneys for Kenneth John Rhule  
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**CERTIFICATE OF SERVICE**

I, Jule Freeman, certify that on October 22, 2020, I electronically filed the Response to Court's Order at Dkt. No. 73 Regarding Current Trial Date and Proposed New Trial Date with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

DATED this 22nd day of October, 2020.

  
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Jule Freeman  
SKELLENGER BENDER, P.S.  
Case Analyst